<u>REMARKS/ARGUMENTS</u>

Pending Claims

Claims 1-25 are pending in the Application. Claims 26-27 have been cancelled. Claims 1-25 have been rejected. Claims 1, 14 and 21 have been amended.

Response to Arguments

With regards to the asynchronous processing, the Examiner states that the disclosed teachings can be found in Bearden in paragraphs [0044, 48, 225, and 260]. Bearden paragraphs [0044, 48] do not state anything regarding asynchronous processing. As following "[0044] Traffic matrices between sources and destinations in the network are often used for tracking network traffic patterns. A traffic matrix has the source as one axis, the destination as the second axis, and a measure of traffic during some interval of time (e.g., packets per second or bytes per second) as the entry in the matrix. Using a set of such matrices from a set of appropriate intervals, a communications provider can track trends in load offered to its network, thus providing a basic tool for network engineering. One existing network monitoring system measures offered packet load and can record information to create a traffic matrix, but cannot track actual network performance. This system tracks sequences of packets between source and destination addresses as a router processes them and reports this information to a central system. By combining such records from several packet switches, it is possible to compute the number of packets and the number of bytes of packet traffic between ingress and egress points of a network. This tool, however, does not provide a means for computing network loss or delay during specific intervals, nor does it provide means for sectionalizing such performance metrics. [0045] A network testing tool known as Chariot marketed by NetIQ Corp. provides predictive information relating to impact of introducing a new application on a data network. This and other products of NetIQ are described generally in their publication Managing the Performance of Networked Applications. General descriptive materials are also available at that web site relating to a Chariot Voice over IP module available from NetIQ." As clearly seen from the above cited paragraphs, the Examiner is mistaken.

Paragraphs [0225] and [0260] state as follows, "[0225] During the call generation phase, a call control module automates the initiation of calls and collection of QoS statistics. Endpoint software must be installed on a computer to send and receive synthetic traffic and to collect and report statistics about this traffic to the call control module. Let E.sub.1 and E.sub.2 be two endpoints in the network running the endpoint software. To initiate a synthetic call between E.sub.1 and E.sub.2 at time t, the call control module sends control information, including call parameters, at time t to the control agents running on both E.sub.1 and E.sub.2. E.sub.1 and E.sub.2 execute the calls and report call statistics back to the call control module. The endpoints compute delay, jitter, and packet loss statistics (such as minimum, maximum and average for each 5 second interval) for each call. The call control module stores the call statistics in the data store 340. [0260] Although this framework is intended for this IP Telephony as the target application, it can be easily used in assessing the QoS levels in a network with respect to other applications with stringent QoS needs. This system can also be used after IP telephony is installed to determine how it is working and to find problem points. It also can be used to help troubleshoot networks for various problems. It could be used for assessing networks for other purposes than voice systems such as other multimedia applications. In fact, it can be used for multiple types of applications concurrently (e.g., VoIP, video, web, etc.) and report the results in a unified visualization. It can also be used to collect other types of quality of service parameters. It would be possible to embed software of this kind in IP telephones in order to monitor the QoS in the network and the quality of the VoIP calls after deployment. *In this manner, the IP phones could be used as test agents for remote monitoring or on-site management. Other types of assessments which can use such a system includes disaster recovery planning, reconfiguration planning, security assessments and tariff arbitrage.*"

There is nothing in the above-cited paragraphs regarding asynchronous processing or systems. *An asynchronous digital system*, in contrast, has no global clock, instead, *it operates under distributed control, with concurrent hardware components communicating and synchronizing on channels.* Asynchronous systems — much like object-oriented software — are typically constructed out of modular 'hardware objects', each with well-defined

communication interfaces. These modules may operate at variable speeds, whether due to data-dependent processing, dynamic voltage scaling, or process variation. The modules can then be combined together to form a correct working system, without reference to a global clock signal. Typically, low power is obtained since components are activated only on demand. Furthermore, several asynchronous styles have been shown to accommodate clocked interfaces, and thereby support mixed-timing design. Hence, asynchronous systems match well the need for correct-by-construction methodologies in assembling large-scale heterogeneous and scalable systems. Therefore, according to the definition of an asynchronous system, it would seem as if the Examiner is reaching to find one in the disclosures of Bearden and Motoyama.

Moreover, the Examiner state that Motoyama teaches the use of reception of data independent of polling intervals. However, this is not so. In the paragraphs cited [0094]-[0098] Motoyama sets forth "[0094] FIG. 14 is a collaboration diagram illustrating the interaction among the classes of the Device Information 1105 module shown in FIG. 13B to obtain and send configuration information of a monitored device from the remote monitoring workstation 911 to the central monitoring workstation 945. As shown in FIG. 14, the process is initiated by a call to the sendConfig( ) method of the CDeviceInformation 1403 class by the Interface 1101. In response, the CDeviceInformation 1403 class calls the startSend( ) method of the CDataTransfer 1405 class to initiate a communication link for sending of the e-mail message that will contain the configuration information. The CDeviceInformation 1403 class then calls the getDeviceInformation( ) method of the CSendODBCInterface 1411 class to obtain the configuration information, including the IP address, of the monitored device from the database. The CDeviceInformation 1403 class then calls the getMACforIP( ) method of the CIP_MACmap 1407 class to obtain a physical address (e.g., the MAC address) for the monitored devices based on the IP address that was obtained from the database. In turn, the CIP_MACmap 1407 class calls the setIPAddressOfAgent( ) and getOctetStringValueForOID( ) methods of the CSnmpResource 1409 class to query the monitored device based on its IP address to receive its physical address through the appropriate SNMP functions. Next, the CDeviceInformation 1403 class calls the setDeviceInformation( ) method of the CSendODBCInterface 1411 class to store

the configuration information in the database. [0095] The CDeviceInformation 1403 class then calls the dataSend( ) method of the CDataTransfer 1405 class to send the configuration information, along with the physical address information, to the central monitoring workstation 945. Finally, the CDeviceInformation 1403 class calls the endSend( ) method of the CDataTransfer 1405 class to complete the sending of the configuration information. [0096] FIG. 15A is a flowchart providing an overview of the functions performed by the Device Monitor 1103 module in the context of the system diagram of FIG. 9. *This process focuses on the collection, storing, and sending of information of the monitored devices from the remote monitoring workstation 911 to the central monitoring workstation 945 as an e-mail message via the SMTP server 915.* [0097] As shown in FIG. 15A, the process begins with step S1501 where it is determined whether information is to be sent to the central monitoring workstation 945. In one embodiment of the present invention, *some information is sent from the remote monitoring workstation 911 to the central monitoring workstation 945 at a different frequency (e.g., less frequently) than a frequency that the monitored devices are polled for status.* If it is determined that the collected information is not to be sent to the central monitoring workstation 945 (i.e., "NO" at step S1501) , the process proceeds to step S1502 where the monitored devices *are polled for a first type of information only.* [0098] The first type of information may include, for example, certain status information that may change states more frequently than information is reported to the central monitoring workstation. A second type of information may include a different class of status information, for example, a counter, a level indicator, or a configuration setting of a monitored device. *For this second type of information, interim values between reporting periods are not of interest.* As would be understood, it is quite possible that, depending on the frequency with which information is sent to the central monitoring workstation 945, status information corresponding to the first type of information, for example, an error condition, could have been corrected between transmissions to the central monitoring workstation 945. For that reason, it is helpful to store the first type of information, so that when information is sent to the central monitoring workstation 945, it can be reported that, in this example, a particular error condition, while not necessarily still present, had occurred since the

last time information was sent. *Accordingly, when the information, including both the first type and the second type of information, is sent to the central monitoring workstation 945, the first type of information stored in the database 913 is queried from the database 913 and sent along with the most recent information. Then, those values in the database 913 are reset to clear any information that had been stored leading up to the transmission to the central monitoring workstation 945.* Again, as clearly pointed out, the polled information, i.e. the needed information (the unpolled information is the less necessary information) is synchronous processing because it is polled. It is necessarily synchronous processing.

Second, the Examiner sets forth that per Bearden-Motoyama, all claimed limitations are fully taught because both inventions discuss a monitoring system in which managed devices are monitored and the values with respect to this monitoring are sent to a central repository for managing. The Examiner goes on to states that Motoyama merely uses email as its preferred protocol through which information is exchanged between the local resource manager and the central manager. *Applicant disagrees.* Motoyama uses polling (synchronous processing) and SNMP protocol for tracking changes between the various network resources associated with the network devices. For example, the SNMP messages are generally exchanges between a central network management system (CNMS) and plurality of network devices, including managed network devices. The CNMS acquires information about the managed devices by contacting each devices separately and retrieving the necessary information using a plurality of SNMP Get and GetNext Operations. The CNMS regularly polls the managed devices. *Motoyama teaches away from Applicant's invention, in that these functions are not claimed and specifically taught away from in the specification. The functionality issues will be discussed in detail below.*

A closer look at Bearden discloses that the application does not teach a monitoring system in which managed devices are monitored and the values with respect to this monitoring are sent to a central repository for managing, it is an application for monitoring traffic in a network. As set forth in the abstract, "*A system for monitoring traffic on a network first discovers the network <u>so as to map the various devices and links in the network</u>. Statistics are*

then gathered from various points in the network relating to quality of service, and especially
*loads on the network devices. **Synthetic calls are generated at selected points of the network***
while monitoring the network. This data is then stored and displayed in a manner that is easy
for the operator to analyze, with more detailed displays being available through the use of a
mouse or keystrokes. The functional application of the disclosure of Bearden is quite different
from Applicant's claims, in one embodiment. The entire network is mapped <u>*prior*</u> to any
functionality being monitored. Once the mapping has been completed, <u>statistics are gathered on</u>
<u>selected **points** of the network</u>. These functions will be discussed in greater detail below as they
pertains to the claimed invention.

<p style="text-align:center">***Rejection under 35 U.S.C. 103(a)***</p>

Claims 1-20 were rejected under 35 U.S.C. 103(a) as being unpatentable over Bearden et
al. (U.S. 2003/0086425) (hereinafter Bearden) and in further view of Montoyama. (U.S.
2003/0055952) (hereinafter Montoyama). Applicants respectfully traverse the rejection of each
and every claim set forth in the Office Action for at least the reasons stated below.

As stated in MPEP § 2143.01, to establish *prima facie* obviousness of a claimed
invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490
F.2d 981, 180 USPQ 580 (CCPA 1974). Applicants respectfully submit, as will be detailed
below, that neither Bearden nor Montoyama do not, either expressly or inherently, teach or
suggest various limitations recited in the pending claims.

As stated in the previous amendment, ***Applicant does not believe that Bearden discloses***
asynchronous processing as described in independent claims 1, 14 and 21 of the instant
application, for example, at least in paragraph 34: [0034] The learning even report is preferably
transmitted automatically without necessarily being initiated at or prompted by the NMS 202
associated with the LRPs. Upon receipt of a learning event report, the LRPs are written to or
otherwise recorded at the central data store where the report is made available at to the NMS and
any authorized network administration personnel, for example. The NMS may therefore retrieve

the state, value, or quality of any of the one or more LRPs of the one or more MNDs as needed. Since the upload of the LRPs by the one or more MNDs is independent of the retrieval by the NMS, the management system of the present invention *may be termed an* asynchronous management system.

As stated in the previous Response, Applicant reserves the right to rescind such an amendment if the portions of the Bearden application that were used to reject every limitation of every claim of the instant application were not present in the Bearden U.S. Provisional Patent Application Ser. No. 60/329,569. Please provide Applicant a copy of the Bearden U.S. Provisional Patent Application Ser. No. 60/329,569 as previously requested.

Bearden does not teach in paragraph [0207] "wherein the value of at least one of the one or more local resource properties is recorded at the central data store and made available to the network management system for asynchronous processing". Paragraph [0207] states "An example way to collect network utilization measurements is by polling switching devices in the network using SNMP. Other ways are telnet/CLI or LDAP. The network device monitoring component 320 of the illustrative embodiment of the present invention shown in FIG. 4 accesses the *network topology data* stored in the data store by the *network discovery phase* to obtain the list of switching devices to monitor. In this section the term device refers to a switching device. *Data collection on these devices in the network involves SNMP MIBs that are indicative of traffic and utilization.* More specifically, device monitoring component 320 polls SNMP agents on discovered devices to collect values for two types of MIB variables. The first type is device-specific MIB variables that pertain to the overall device, such as the total number of input packets received on all interfaces. The second type is interface specific pertaining to an individual interface, such as the total number of octets received on an interface." *Applicant would respectfully ask that the Examiner point to the language in the above-mentioned paragraph that states the claim language* "wherein the value of at least one of the one or more local resource properties is recorded at the central data store and made available to the network management system for *asynchronous processing*." There is no reference to asynchronous processing. In addition, Applicant respectfully requests that the examiner provide proof that

paragraph [0207] was in the first 15 pages of the provisional application as mentioned above. "[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." (In re Kahn, 441 F. 3d 977, 988 (CA Fed. 2006) cited with approval in KSR). Beardon as shown in the paragraph as set forth above does not contain the claim elements as set forth in Applicants' claim. Thus, Applicants' claims are patentably distinct and allowable under 37 CFR 1.111(b).

     Moreover, the Examiner states that Bearden does not teach that "the values of the resource properties are uploaded by the managed devices "independent of their retrieval by the network management system." The Examiner goes on to states that this is disclosed in Montoyama. However, this not disclosed in Montoyama as Applicants will clearly show. First, Montoyama teaches an entirely different invention, the abstract states "In a monitoring system for networked devices, a system, method, and computer program product for transferring monitoring information from a remote monitor to a central monitor responsible for monitoring devices on multiple networks. A communications link is established between a remote monitor and a message transfer server. Monitoring information is formatted into a standard format, encrypted, encoded, and sent from the remote monitor to the central monitor as an attachment to *an e-mail sent via the communication link to the message transfer server.*" Montoyama teaches *only an email system and remote monitoring via email attachments*. For example, "[0080] FIG. 9 illustrates an application of the present invention. Devices 901, 903, 905 and 907 that are connected to the Intranet 910 are the devices to be monitored locally by a remote monitoring workstation 911 with its database 913. Alternatively, the remote monitoring workstation 911 can function to send the device status information to the central monitoring workstation 945 by polling the information from the monitored devices 901, 903, 905, and 907 and by sending the information through the firewall 917. The remote monitoring workstation 911, therefore, can function either as a monitoring device or as a communication and administrative device between the monitored devices and monitoring device. In FIG. 9, *the remote monitoring workstation 911 uses the Simple Network Management Protocol (SNMP)*

defined by IETF to communicate with the attached devices. SNMP is described in "Managing Internetworks with SNMP, third edition" by Mark A. Miller, P. E., M & T Book, 1999. The entire contents of this reference are incorporated herein by reference. If *some of the devices* to be monitored do not support SNMP, the remote monitoring workstation 911 can use a different method to obtain the necessary information. After obtaining the necessary information, the remote monitoring workstation 911 uses the Simple Mail Transfer Protocol (SMTP) Server 915 to send out the necessary information to the central monitoring workstation 945 through the Mail Server 943 that supports the Post Office Protocol Version 3 (POP3) (IETF Networking Group Request For Comments [RFC]: 1939). The remote monitoring workstation 911 uses SMTP (SMTP is defined in IETF RFC 821) and possibly Multipurpose Internet Mail Extensions (MIME) to send e-mails. *The remote monitoring workstation 911 generates the mail message that is at and above the Application Layer of the TCP/IP model or the ISO seven-layer model,* as shown later. Alternatively, *the remote monitoring workstation 911 may include an SMTP processor to send out the necessary information using e-mail.*" The Examiner sets forth in the Office Action that while Motoyama uses email, any method could be used. In the present case, that is not true. The entire disclosure of Motoyama is built upon email transmission. As such, it is not inherent in Motoyama to use another transmission method. As such, under the present analysis, independent claims 1, 14 and 21 are patentably distinct under 37 CFR 1.111(b). Moreover, each and every claim depending therefrom is patentably distinct, as well, because each limitation of independent claims 1, 14 and 21 are incorporated therein.

"In the instant case, we conclude that a person of ordinary skill in the art having common sense at the time of the invention would not have reasonably looked to _____ to solve a problem already solved by Applicant." Ex Parte Rinkevich et al, Appeal 20071317, decided May 29, 2007. Distilling an invention down to the "gist" or "thrust" of an invention disregards the requirement of analyzing the subject matter "as a whole." W.L. Gore & Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984).

In fact, Montoyama teaches the opposite of "wherein the value of at least one of the one or more local resource properties is uploaded by the one or more managed network devices, via a

local resource manager, <u>and written to the central data store where they are made available to, for</u> independent of retrieval of the value by the network management system," in paragraph [0098] wherein the Examiner states that Motoyama teaches "the managed devices upload local resource properties to the remote monitoring station and this then constitutes the local resource properties are uploaded by the managed resource device independent of retrieval of the value by the network management system." ***First, the Examiner is misconstruing the claim, as the claim does not state these limitations. Second, Motoyama clearly states (as cited by the Examiner) "the managed devices upload local resource properties to the remote monitoring station."*** As stated by the Examiner, "The first type of information may include, for example, certain status information that may change states more frequently than information is reported to the central monitoring workstation. A second type of information may include a different class of status information, for example, a counter, a level indicator, or a configuration setting of a monitored device. For this second type of information, interim values between reporting periods are not of interest. ***As would be understood, it is quite possible that, depending on the frequency with which information is sent to the central monitoring workstation 945, status information corresponding to the first type of information, for example, an error condition, could have been corrected between transmissions to the central monitoring workstation 945.*** For that reason, it is helpful to store the first type of information, so that when information is sent to the central monitoring workstation 945, it can be reported that, in this example, a particular error condition, while not necessarily still present, had occurred since the last time information was sent. Accordingly, when the information, including both the first type and the second type of information, ***is sent to the central monitoring workstation 945, the first type of information stored in the database 913 is queried from the database 913 and sent along with the most recent information.*** Then, those values in the database 913 are reset to clear any information that had been stored leading up to the transmission to the central monitoring workstation 945." Thus, in this case, Montoyama's central monitoring workstation is somewhat related to Applicants' network management system. Montoyama is providing a different function than appears in Applicant's claims, in one embodiment.

Finally, the Examiner sets forth that even though it IS NOT TAUGHT by the disclosures, it would have been obvious to send status information automatically, rather than necessitating polling by a manager, as taught by both Bearden and Motoyama. However, if at the time the invention was made, it was obvious to those of ordinary skill in the art, showing such actions in any related prior art should be simple. It was not obvious at the time of the invention, to those of ordinary skill in the art to combine the claim elements as they have been combined to invent the invention as invented by Applicant. As stated in MPEP § 2143.01, to *establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). As such, under the present analysis, independent claims 1, 14 and 21 are patentably distinct under 37 CFR 1.111(b). Moreover, each and every claim depending therefrom is patentably distinct, as well, because each limitation of independent claims 1, 14 and 21 are incorporated therein.

Further, In some cases, if fact in every independent claim, there is at least one portion of the claim wherein the Examiner cannot find a piece of art, he takes *Official Notice* that the particular claim element is well known without any *evidence as required by law*. On remand from the Supreme Court, the Federal Circuit in In re Zurko, 258 F.3d 1379, 59 USPQ2d 1693 (Fed. Cir. 2001), reversed the Board's decision upholding a rejection under 35 U.S.C. 103 for lack of substantial evidence. Specifically, in Zurko and other recent decisions, the court criticized the USPTO's reliance on "basic knowledge" or "common sense" to support an obviousness rejection, where there was no evidentiary support in the record for such a finding. In light of the recent Federal Circuit decisions and the substantial evidence standard of review now applied to USPTO Board decisions, the following guidance is provided in order to assist the examiners in determining when it is appropriate to take official notice of facts without supporting documentary evidence or to rely on common knowledge in the art in making a rejection, and if such official notice is taken, what evidence is necessary to support the examiner's conclusion of common knowledge in the art:

(1) Determine when it is appropriate to take official notice without documentary evidence to support the examiner's conclusion.

Official notice without documentary evidence to support an examiner's conclusion is permissible only in some circumstances. While "official notice" may be relied on, as noted in MPEP § 2144.03, these circumstances should be rare when an application is under final rejection or action under 37 CFR 1.113. Official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of <u>instant and unquestionable</u> demonstration as being well-known. In appropriate circumstances, it might not be unreasonable to take official notice of the fact that it is desirable to make something faster, cheaper, better, or stronger without the specific support of documentary evidence. Furthermore, it might not be unreasonable for the examiner in a first Office action to take official notice of facts by asserting that certain limitations in a dependent claim are old and well known expedients in the art without the support of documentary evidence provided the facts so noticed are of notorious character and serve only to "fill in the gaps" which might exist in the evidentiary showing made by the examiner to support a particular ground of rejection.

It would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known. For example, assertions of technical facts in the areas of esoteric technology or specific knowledge of the prior art must always be supported by citation to some reference work recognized as standard in the pertinent art. It is never appropriate to rely solely on "common knowledge" in the art without evidentiary support in the record, as the principal evidence upon which a rejection was based. As the court held in Zurko, an assessment of basic knowledge and common sense that is not based on any evidence in the record lacks substantial evidence support. (2) If official notice is taken of a fact, unsupported by documentary evidence, the technical line of reasoning underlying a decision to take such notice must be clear and unmistakable. *See Memorandum to Patent Examining Corps Technology Center Directors* dated February 21, 2002. The directory server is a technology area, <u>in the areas of esoteric technology or specific knowledge of the prior art must always be supported by</u>

citation to some reference work recognized as standard in the pertinent art and must always be supported by prior art.

Although Applicants do not believe the cited art teach, suggest or disclose the instant claims, purely in the interest of expediting the prosecution of the instant application, Applicants have amended claims 1, 14 and 21 to substantially include at least one of the following limitations:

> monitoring the value of said one or more local resource properties;
>
> querying the local resource properties, determining a state, value and quality of the local resource properties and assessing a priority of the local resource properties;
>
> generating a learning event report comprising the value and a priority test of the learning event of at least one of the one or more local resource properties;

Support for such limitations can be found at least in paragraphs [0025] and [0056] of the instant application. Neither Beardon nor Montoyama teach or suggest such limitations. As such, Applicants believe that claims 1, 14 and 21 as well as the claims that depend from claims 1, 14 and 21, are in condition for allowance and respectfully request they be passed to allowance. In light of the arguments set forth below, Applicant traverses each and every claim, depending from claims 1, 14 and 21.

Per Claim 5, the Examiner states that both Motoyama and Bearden further teach the method of claim 1, however do not teach that the central data store is a directory server. Moreover, in the last Office Action, the Examiner set forth various paragraphs in which the claim element was set forth. Applicant set forth an argument against the Examiner's position. Now, it is interesting that he is just taking "Official Notice." However, a directory server is not a data store by any means and the Examiner is taking Official Notice to include the storage system of Bearden as a directory sever. As set forth above, Official Notice without documentary evidence to support an examiner's conclusion is permissible only in some circumstances. *While "official notice" may be relied on, as noted in MPEP § 2144.03, these circumstances should be rare when an application is under final rejection or action under* 37 CFR 1.113. Official notice

unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of <u>instant and unquestionable</u> demonstration as being well-known. In appropriate circumstances, it might not be unreasonable to take official notice of the fact that it is desirable to make something faster, cheaper, better, or stronger without the specific support of documentary evidence. Furthermore, it might not be unreasonable for the examiner in a first Office action to take official notice of facts by asserting that certain limitations in a dependent claim are old and well known expedients in the art without the support of documentary evidence provided the facts so noticed are of notorious character and serve only to "fill in the gaps" which might exist in the evidentiary showing made by the examiner to support a particular ground of rejection.

It would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known. For example, assertions of technical facts in the areas of esoteric technology or specific knowledge of the prior art must always be supported by citation to some reference work recognized as standard in the pertinent art. It is never appropriate to rely solely on "common knowledge" in the art without evidentiary support in the record, as the principal evidence upon which a rejection was based. As the court held in Zurko, an assessment of basic knowledge and common sense that is not based on any evidence in the record lacks substantial evidence support. (2) If official notice is taken of a fact, unsupported by documentary evidence, the technical line of reasoning underlying a decision to take such notice must be clear and unmistakable. See Memorandum to Patent Examining Corps Technology Center Directors dated February 21, 2002. This is a technology area, <u>in the areas of esoteric technology or specific knowledge of the prior art must always be supported by citation to some reference work recognized as standard in the pertinent art</u> and must always be supported by prior art.   Thus, the cited art does not teach or suggest, inherently or expressly, Applicant's claim 5. Under the present analysis, Applicant's claim 5 is allowable under 37 CFR 1.111(b).

Per claim 9, the same arguments apply as above per claim 5. Per Claim 9, the Examiner states that both Motoyama and Bearden further teach period polling but do not teach polling in

specific 5 second to 15 minute intervals. However, period polling can mean daily polling, weekly polling or monthly polling, not polling in specific 5 second to 15 minute intervals by any means and the Examiner is taking Official Notice to include the period polling of Bearden/Motoyama. As set forth above, Official Notice without documentary evidence to support an examiner's conclusion is permissible only in some circumstances. *While "official notice" may be relied on, as noted in MPEP § 2144.03, these circumstances should be rare when an <u>application is under final rejection</u> or action under* 37 CFR 1.113. Official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of <u>instant and unquestionable</u> demonstration as being well-known. In appropriate circumstances, it might not be unreasonable to take official notice of the fact that it is desirable to make something faster, cheaper, better, or stronger without the specific support of documentary evidence. Furthermore, it might not be unreasonable for the examiner in a first Office action to take official notice of facts by asserting that certain limitations in a dependent claim are old and well known expedients in the art without the support of documentary evidence provided the facts so noticed are of notorious character and serve only to "fill in the gaps" which might exist in the evidentiary showing made by the examiner to support a particular ground of rejection.

It would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known. For example, assertions of technical facts in the areas of esoteric technology or specific knowledge of the prior art must always be supported by citation to some reference work recognized as standard in the pertinent art. It is never appropriate to rely solely on "common knowledge" in the art without evidentiary support in the record, as the principal evidence upon which a rejection was based. As the court held in Zurko, an assessment of basic knowledge and common sense that is not based on any evidence in the record lacks substantial evidence support. (2) If official notice is taken of a fact, unsupported by documentary evidence, the technical line of reasoning underlying a decision to take such notice must be clear and unmistakable. See Memorandum to Patent Examining Corps Technology

Center Directors dated February 21, 2002. The issue of timing of polling and when the greatest benefit occurs with a specific system, since all systems are different, a technology area, <u>in the areas of esoteric technology or specific knowledge of the prior art must always be supported by citation to some reference work recognized as standard in the pertinent art</u> and must always be supported by prior art. Thus, the cited art does not teach or suggest, inherently or expressly, Applicant's claim 5. Under the present analysis, Applicant's claim 5 is allowable under 37 CFR 1.111(b).

Again, Applicant's claimed invention is not disclosed. Distilling an invention down to the "gist" or "thrust" of an invention disregards the requirement of analyzing the subject matter "as a whole." W.L. Gore & Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984). Under the present analysis, Applicant's claim 7 is allowable under 37 CFR 1.111(b).

Further, in direct relation to claim 5, the Examiner states that "the central data store is a directory server enabled to exchange one or more Lightweight Directory Access Protocol messages", is taught by Bearden/Motoyama on the basis of obviousness. Now the Examiner is taking an additional step. Per Claim 5, the Examiner states that both Motoyama and Bearden further teach the method of claim 1, however do not teach that the central data store is a directory server. However, a directory server is not a data store by any means and the Examiner is taking Official Notice to include the storage system of Bearden as a directory sever. As set forth above, Official Notice without documentary evidence to support an examiner's conclusion is permissible only in some circumstances. *While "official notice" may be relied on, as noted in MPEP § 2144.03, these circumstances should be rare when an <u>application is under final rejection</u> or action under* 37 CFR 1.113. Official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of <u>instant and unquestionable</u> demonstration as being well-known. In appropriate circumstances, it might not be unreasonable to take official notice of the fact that it is desirable to make something faster, cheaper, better, or stronger without the specific support of documentary evidence. Furthermore, it might not be unreasonable for the

examiner in a first Office action to take official notice of facts by asserting that certain limitations in a dependent claim are old and well known expedients in the art without the support of documentary evidence provided the facts so noticed are of notorious character and serve only to "fill in the gaps" which might exist in the evidentiary showing made by the examiner to support a particular ground of rejection.

It would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known. For example, assertions of technical facts in the areas of esoteric technology or specific knowledge of the prior art must always be supported by citation to some reference work recognized as standard in the pertinent art. It is never appropriate to rely solely on "common knowledge" in the art without evidentiary support in the record, as the principal evidence upon which a rejection was based. As the court held in Zurko, an assessment of basic knowledge and common sense that is not based on any evidence in the record lacks substantial evidence support. (2) If official notice is taken of a fact, unsupported by documentary evidence, the technical line of reasoning underlying a decision to take such notice must be clear and unmistakable. See Memorandum to Patent Examining Corps Technology Center Directors dated February 21, 2002. This is a technology area, <u>in the areas of esoteric technology or specific knowledge of the prior art must always be supported by citation to some reference work recognized as standard in the pertinent art</u> and must always be supported by prior art. Thus, the cited art does not teach or suggest, inherently or expressly, Applicant's claims 5 and 9. Under the present analysis, Applicant's claims 5 and 9 are allowable under 37 CFR 1.111(b).

As such, Applicant believes that the independent claims, as well as the claims that depend on them are in condition for allowance. Should the Examiner have any further comments or suggestions, it is respectfully requested that the Examiner contact the undersigned to expeditiously resolve any outstanding issues.

Respectfully submitted,

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